

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

GARY L. MCCOY,

Plaintiff,

Case No. 3:17-cv-432

vs.

RODNEY L. CARLSON, *et al.*,

Defendants.

District Judge Thomas M. Rose
Magistrate Judge Michael J. Newman

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF'S SECOND MOTION FOR
DECLARATION OF COMPLETED SERVICE OF PROCESS OR, ALTERNATIVELY,
FOR AN EXTENSION OF TIME TO COMPLETE SERVICE OF PROCESS (DOC. 31)
BE DENIED AS MOOT**

This civil case is before the Court on Plaintiff's motion (doc. 31) seeking a declaration that he completed service of process on Defendants Carlson and Conley or, alternatively, seeking an extension of time to complete service on these Defendants.² Defendants Carlson and Conley filed no opposition to Plaintiff's motion, and the time for doing so expired.

Defendants Carlson and Conley have now both filed a combined motion seeking, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the operative complaint for failure to state a claim. *See* doc. 61. Defendants' motion to dismiss remains pending for the Court's consideration and will be decided by separate entry. In their combined motion to dismiss, Defendants do not seek dismissal for insufficient process or service under Fed. R. Civ. P. 12(b)(4) or (5). Accordingly, Defendants Carlson and Conley have waived any defense regarding insufficient process or service of process.

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

² At the time Plaintiff filed the subject motion, Defendants Carlson and Conley were the only named Defendants in the case. Plaintiff subsequently filed an amended complaint with leave of Court. That amended complaint added additional parties.

See Fed. R. Civ. P. 12(g) and (h); *see also* Rule 12(h) 1966 Advisory Committee Notes (“certain specified defenses which [are] available to a party when [making] a preanswer motion, but . . . omitted from the motion, are waived. The specified defenses are lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process”).

Therefore, the declaration Plaintiff seeks regarding completed service need not be made by the Court. Accordingly, the undersigned **RECOMMENDS** that Plaintiff’s second motion for a declaration of completed service or alternative motion for extension of time to obtain service (doc. 31) be **DENIED AS MOOT**.

Date: February 4, 2019

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. This period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d). Parties may seek an extension of the deadline to file objections by filing a motion for extension, which the Court may grant upon a showing of good cause.

Any objections filed shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs.

A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As noted above, this period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d).

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).